

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

IN RE: DIGITEK PRODUCT LIABILITY LITIGATION
MDL NO. 1968

CARLA YORK, ET AL.,)
PLAINTIFFS,)
V.) MDL NO.
2:09-CV-00544
ACTAVIS TOTOWA, LLC, ET AL.,)
DEFENDANTS.)

DEPOSITION OF [REDACTED] PRODUCED, SWORN
AND EXAMINED ON THE 11TH DAY OF DECEMBER, 2009,
BETWEEN THE HOURS OF 12:30 P.M. AND 3:21 P.M., AT
THE OFFICES OF DINSMORE & SHOHL, 500 WEST JEFFERSON
STREET, SUITE 1400, LOUISVILLE, JEFFERSON COUNTY,
KENTUCKY, BEFORE LISA MIGLIORE BLACK, CERTIFIED
COURT REPORTER--KENTUCKY AND NOTARY PUBLIC WITHIN
AND FOR THE STATE OF KENTUCKY.

*** **

APPEARANCES

FOR THE PLAINTIFFS:

LAWRENCE L. JONES, II, ESQ.

LAWRENCE JONES, II, ESQ.

BAHE, COOK, CANTLEY & JONES

KENTUCKY HOME LIFE BUILDING

239 SOUTH FIFTH STREET

SUITE 700

LOUISVILLE, KENTUCKY 40202

FOR THE DEFENDANTS:

HOLLY SMITH, ESQ.

SHOOK, HARDY & BACON

2555 GRAND BOULEVARD

KANSAS CITY, MISSOURI 64108

APPEARING VIA SPEAKERPHONE ON BEHALF OF MYLAN

PHARMACEUTICALS INC., MYLAN BERTEK PHARMACEUTICALS

INC., AND UDL LABORATORIES

LESLIE E. CRISWELL, ESQ.

TUCKER, ELLIS & WEST

515 SOUTH FLOWER STREET

FORTY-SECOND FLOOR

LOS ANGELES, CALIFORNIA 90071

APPEARING ON BEHALF OF ACTAVIS TOTOWA LLC, ACTAVIS

INC., AND ACTAVIS ELIZABETH LLC

INDEX TO EXAMINATION

	PAGE
EXAMINATION BY MS. CRISWELL	4
EXAMINATION BY MS. SMITH	119
EXAMINATION BY MS. CRISWELL	123
EXAMINATION BY MS. SMITH	136
EXAMINATION BY MR. JONES	138
EXAMINATION BY MS. CRISWELL	141
EXAMINATION BY MR. JONES	143
EXAMINATION BY MS. CRISWELL	143
CERTIFICATE	146

INDEX TO EXHIBITS

EXHIBIT 1, COMPLAINT	4
EXHIBIT 2, PLAINTIFF FACT SHEET	4

1 written record. So we have to have words.

2 Do you have any questions before we get
3 started?

4 A. I don't think so.

5 Q. Okay. You're feeling okay to go ahead
6 with this?

7 A. Yes.

8 Q. Is that yes?

9 A. Yes.

10 Q. I got you.

11 A. You did get me, didn't you?

12 Q. You are a nurse.

13 A. That's correct.

14 Q. Yeah, and you've been a nurse for a
15 number of years.

16 A. Yes.

17 Q. For how long?

18 A. More than 40.

19 Q. And what type of specialization do you
20 have in that field?

21 A. Since 1997, I've been a psychiatric
22 nurse practitioner.

23 Q. Okay. Prior to that, what was your area
24 of focus?

25 A. I started out in obstetrics, and then I

1 Q. -- of Indiana?

2 A. Thank you for the subtraction, yeah.

3 Q. Okay. Have you ever been a resident of

4 [REDACTED]

5 A. Yes, I've lived in [REDACTED] My family
6 is all from [REDACTED]

7 Q. Okay. And when were you a resident of
8 the State of [REDACTED]

9 A. When I was eight years old.

10 Q. And that's it?

11 A. Uh-huh.

12 Q. Is that yes?

13 A. Yes.

14 Q. Okay. All right. I want to understand
15 at the outset here what claims you are making in
16 this case.

17 What are your claims in this lawsuit?

18 A. I received dosages of Digitek that were
19 inappropriate, and they gave me cardiac symptoms for
20 an extended period of time.

21 Q. Okay. Now, are you talking specifically
22 about Digitek or some other form of the same kind of
23 medication?

24 A. I'm talking about specifically Digitek.

25 Q. Okay. And what was it about the dosage

1 that was not appropriate, to use your words?

2 A. I got all of the same symptoms that one
3 gets when one is toxic on Digitek. I was supposed
4 to be getting 0.25.

5 Q. And you were getting what?

6 A. Obviously I was getting more.

7 Q. Why do you say that?

8 A. Because I had symptoms.

9 Q. So your conclusion is because you had
10 symptoms, you must have been getting more than 0.25
11 milligrams in the tablet?

12 A. Correct.

13 Q. Over what period of time was this
14 happening?

15 A. I received Digitek from February of 2006
16 until about May 2008. I didn't start having
17 symptoms until October or November of '07, and those
18 continued to May of '08.

19 Q. Okay. So what symptoms did you begin to
20 experience in October or November of '07?

21 A. Fatigue, shortness of breath without
22 exertion, sleepiness to the point that I had a
23 houseful of company at Thanksgiving, and I went to
24 bed because I had to sleep.

25 Q. It's that turkey.

1 A. No, I hadn't even had any,
2 unfortunately. My husband was cooking it.

3 I also had a regular heart rhythm [sic].

4 Q. Irregular?

5 A. Irregular heart rhythm, and that was
6 intermittent.

7 Q. Any other symptoms?

8 A. I was very limited as far as activity
9 would be concerned. I would get short of breath,
10 although I did get short of breath without activity
11 also.

12 Q. Okay. Any other symptoms that you
13 noticed in the October/November time frame that you
14 attribute to Digitek?

15 A. The sleepiness, the fatigue, shortness
16 of breath. I'm just trying to think. Those were
17 the primary ones.

18 Q. Are there any others that you can think
19 of?

20 A. Not that I can think of at this moment.

21 Q. So what changed, if anything, in
22 October/November of '07 that coincided with the
23 symptoms now becoming -- I guess not becoming, but
24 beginning?

25 A. I'm not really sure except that I did

1 get a new prescription of Digitek in October --

2 Q. Okay.

3 A. -- a refill.

4 Q. A refill from who?

5 A. Caremark.

6 Q. Caremark.

7 Okay. And is that -- for how long has Caremark
8 been your pharmacy?

9 A. Oh, 10, 15 years.

10 Q. Okay. So had Caremark been the place
11 that you had been getting prescriptions of Digitek
12 filled from February of '06 to October of '07?

13 A. Correct.

14 Q. Okay. Was it always 0.25 milligrams?

15 A. Yes.

16 Q. And was the dosage to be taken once a
17 day?

18 A. Yes.

19 Q. And the doctor that prescribed that
20 medication for you, was the same person from
21 February of '06 to May of '08?

22 A. Correct.

23 Q. And who was that?

24 A. Dr. Roshan Mathew.

25 Q. Okay. He's a cardiologist?

1 '08 -- of '07 -- I'm sorry, '08. I'm sorry.

2 Q. Anything else that you can recall?

3 A. Not that I can recall.

4 Q. Okay. Between February of '08 and May
5 of '08, did the symptoms get worse, get better, stay
6 about the same -- the ones we've talked about?

7 A. They stayed about the same. I would
8 still have the episodes. At that point, the
9 irregular heart was very noticeable, and I would get
10 light-headed to the point I would have to sit down.

11 Q. And when did that start?

12 A. That started in like the beginning of
13 February --

14 Q. Okay.

15 A. -- beginning to mid-February. That's
16 when I called my cardiologist.

17 Q. Okay. And the cardiologist is who?

18 A. Dr. Mathew.

19 Q. That's right. All right. So Dr. Mathew
20 is your cardiologist throughout all of this?

21 A. Right.

22 Q. So when you first began to notice the
23 significant fatigue and the shortness of breath
24 starts, the sleepiness, and the intermittent heart
25 rhythm in '07, did you talk to him?

1 A. Yes.

2 Q. And what was his response to all of
3 that?

4 A. He did lab tests. I can't remember all
5 of them. He did check my thyroid and blood count,
6 the things that you reasonably would do when someone
7 has unexplained fatigue.

8 Q. Did he do any testing of blood levels
9 for digitalis?

10 A. No -- not that I'm aware of. No, I
11 shouldn't say that.

12 Q. Not that you're aware of?

13 A. Not that I'm aware of.

14 Q. Did you and he during that -- during
15 that visit have any discussion at all about the
16 medications you were taking?

17 A. We always review medications every
18 visit.

19 Q. Okay. So when you review medications,
20 how do you do that?

21 A. They already have a list, and we compare
22 my current list with what they have, and correct it.

23 Q. Okay. Do you remember having to make
24 any corrections during that visit?

25 A. No, I don't.

1 Q. Okay. So as far as you recall, your
2 list and his list were the same?

3 A. Right.

4 Q. All right. Did you and he have any
5 discussion during that visit about Digitek?

6 A. No.

7 Q. Did he have any explanation for you as
8 to what was causing the significant fatigue,
9 shortness of breath, sleepiness, and the irregular
10 heart rhythm?

11 A. He did not. He did contact me -- or his
12 nurse contacted me later on, and he did put me on an
13 iron supplement, concerned maybe that my iron stores
14 were not what they should be.

15 Q. Okay. Do you remember him giving you
16 any explanation at all for these conditions?

17 A. No.

18 Q. Nothing.

19 Okay. Okay. So when you left his office in
20 January '08, you would have scheduled ahead for the
21 next six-month visit, correct?

22 A. Correct.

23 Q. And do you remember, when was the next
24 time you actually saw Dr. Johnson after that date?

25 A. I don't remember that date. It probably

1 A. Until the -- probably the first week,
2 week and a half in May.

3 Q. And what happened then?

4 A. I had gotten a letter from Caremark
5 telling me not to take them anymore -- not to stop
6 my medication, but to notify my primary care or my
7 cardiologist. They don't -- they didn't recommend
8 me stopping anything, but they wanted me to be
9 sure -- and they were going to replace my medication
10 with a different brand.

11 Q. What else did they say in the letter?

12 A. That there had been a recall, that
13 possibly the dosage was higher than it should have
14 been. That's all I can remember.

15 Q. Okay. You got the letter. You read the
16 letter?

17 A. Correct.

18 Q. And did you talk to your doctors about
19 it?

20 A. Yes, I did. Within a day, day and a
21 half.

22 Q. Who did you call?

23 A. Dr. Mathew.

24 Q. Okay. Did you call Dr. Johnson as well?

25 A. No.

1 hospital and two weeks thereafter.

2 Q. Okay. This was the hospital, then
3 transferred to Jewish Hospital?

4 A. Yes.

5 Q. Okay. Are there any other monetary
6 losses that you personally are claiming in this
7 lawsuit?

8 A. There's doctors' co-pays, our deductible
9 for the hospital admissions, anything that wasn't
10 covered by my insurance.

11 Q. Okay. What was the deductible?

12 A. I can't remember what our deductible is.
13 It changes from year to year, and I can't remember
14 at this point what it was.

15 Q. Can you give me a rough approximation?

16 A. \$300.

17 Q. Okay.

18 A. That's a guess.

19 Q. Okay. Total guess, or does it have some
20 basis in reality?

21 A. Well, I know at least one year, that's
22 what it was, and I don't remember which year that
23 was.

24 Q. And how about co-pays? What is your
25 claim for co-pays?

1 A. Co-pays, until this year, they've all
2 been \$20 every time I went to the doctor. Then
3 there were other -- any time you go and you have a
4 treadmill or something, it doesn't all get paid for.

5 Q. Well, what number of doctor visits are
6 you claiming you would not have had to have had but
7 for the Digitek?

8 A. The one I had in January would have been
9 our scheduled one. That would have been a \$20 one,
10 but then the one with Dr. Mathew after that.

11 Q. Okay. The one with Dr. Johnson, you
12 would have been doing anyway?

13 A. Correct.

14 Q. So we're talking about one co-pay for
15 one visit with Dr. Mathew?

16 A. Yes.

17 Q. Any other monetary damages that you are
18 claiming in this case?

19 A. I don't remember exactly how much we had
20 to pay out for hospitalization and testing, but I do
21 not remember that number. It's here somewhere, but
22 I don't remember the number.

23 Q. How would you figure out what that
24 number is if you wanted to?

25 A. We would look at our explanation of

1 benefits.

2 Q. Do you keep those?

3 A. Yes.

4 Q. Okay. How far back do you keep those?

5 A. Way back. My husband is meticulous.

6 Q. Okay. All right. So you would have the
7 ability to reconstruct that?

8 A. Correct.

9 Q. Okay. Any other out-of-pocket -- call
10 them out-of-pocket monetary damages that you're
11 seeking?

12 A. I can't think of any right this minute.

13 Q. All right. Are you seeking any -- we'll
14 circle back around to this in a minute. Let me talk
15 to you about the 117 tablets. Okay?

16 If you would, look at page six of Exhibit 2.
17 Do you see question six, which talks about packaging
18 or tablets? Do you see that?

19 A. Yes.

20 Q. So the packaging that your attorney has
21 would be that one plastic bottle -- clear plastic
22 bottle with a screw top --

23 A. Uh-huh.

24 Q. -- screw top, white childproof lid,
25 right?

1 Q. Do you know anybody who was taking
2 Digitek and actually sent their unused tablets back
3 for a refund?

4 A. No.

5 Q. Okay. And your recollection is you
6 never received a directive to return anything for a
7 refund; is that right?

8 A. Not that I recall, right.

9 Q. When you first started taking Digitek in
10 '06, were there symptoms you discussed with your
11 doctor, where if you started to experience those,
12 you were supposed to call him and tell him? Do you
13 remember any discussion like that?

14 A. No.

15 Q. Does that mean you didn't have that
16 discussion or you may not remember?

17 A. I don't recall that we had that
18 discussion. The main discussion was, "If you start
19 having any chest pain, you let me know."

20 Q. Not shortness of breath, not fatigue?

21 A. Fatigue, yes, shortness of breath.
22 There's a million things that can cause both of
23 those.

24 Q. Sure.

25 You went on that Actavis website --

1 A. Uh-huh.

2 Q. -- to see what they had to say.

3 Did you ever try to contact those folks in any
4 way?

5 A. No.

6 Q. What about any other drug company? Did
7 you try to contact anybody else in that business to
8 talk to them about the lawsuit --

9 A. No.

10 Q. -- or this drug?

11 A. No.

12 Q. Are you making a claim in this case for
13 emotional distress?

14 A. Yes. It was probably the most traumatic
15 thing that's happened to me and to my family.

16 Q. Okay.

17 A. It changed my whole life actually. I --
18 the thing that sticks in my mind, is I usually would
19 get -- well, I always got a reserved seat to the
20 Broadway plays in Owensboro, and I did not do that
21 when they could not fix my heart, and I didn't want
22 to waste the money.

23 Q. Okay.

24 A. My husband would reach over in the night
25 just to be sure I was breathing. That was the most

1 Q. And what is the scope of the damages
2 that you're going to seek to recover for the class
3 in this case?

4 A. Ask me that again.

5 Q. Yeah. What kinds of damages are you, as
6 a representative, or one of the representatives,
7 going to seek to recover for the class members?

8 A. There has to be some economic,
9 emotional, or physical -- even though I'm not
10 involved with that, but that's what I understand,
11 you know, whatever is deemed to be appropriate.

12 Q. Okay. But I'm trying to understand what
13 exact type of damages are you going to try to
14 recover for the members of the class?

15 A. Me personally?

16 Q. You personally because you're a class
17 rep.

18 A. Certainly the out-of-pocket expense, and
19 certainly I can speak to the emotional piece of it,
20 although I didn't have a loved one die.

21 Q. Okay. So you're intending to recover
22 for the class members what we'll call economic
23 damages and emotional damages?

24 A. Those are the ones that I can speak to,
25 yes.

1 tablet, or do you think some of those tablets were
2 fine and others of them had too much?

3 A. I can't speak to that. I don't know.

4 Q. You mentioned that you have a patient
5 who you believe is still taking Digitek.

6 Have you talked to her about the fact that
7 you're bringing a lawsuit about Digitek?

8 A. No.

9 Q. Do you understand that -- and this is a
10 question. Do you know whether she would be a
11 proposed class member in the class that you are
12 requesting?

13 A. No, she's -- she never gave me any
14 indication she was having any problems whatsoever.

15 Q. Is your lawsuit, then, in your
16 understanding, limited to people who had problems
17 with Digitek or anybody that took Digitek?

18 A. Only people who had problems with it.

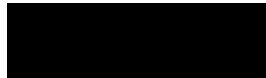
19 Q. So to the extent a person took Digitek
20 but didn't experience any type of physical symptom,
21 then they would not be a member of your proposed
22 class as you understand it?

23 A. As I understand it.

24 MS. SMITH: I think those are all the
25 questions I have for you today. Again, thank you

STATE OF KENTUCKY)
) SS: ERRATA
COUNTY OF JEFFERSON)

I HAVE READ THE FOREGOING PAGES, AND THE
STATEMENTS CONTAINED THEREIN (SUBJECT TO
CORRECTIONS, ADDITIONS, AND DELETIONS CONTAINED IN
THE ADDENDUM ANNEXED HERETO, IF ANY), AND THEY ARE
TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.



SUBSCRIBED AND SWORN BEFORE ME THIS DAY BY
 , THIS DAY OF 2009.
MY COMMISSION EXPIRES:

NOTARY PUBLIC

COMMONWEALTH OF KENTUCKY)
)
COUNTY OF JEFFERSON)

I, LISA MIGLIORE BLACK, CCR-KY, A NOTARY PUBLIC,
WITHIN AND FOR THE STATE AT LARGE, DO HEREBY CERTIFY
THAT THE FOREGOING DEPOSITION OF

WAS TAKEN BEFORE ME AT THE TIME AND PLACE AND FOR THE PURPOSE IN THE CAPTION STATED; THAT THE WITNESS WAS FIRST DULY SWORN TO TELL THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH; THAT THE DEPOSITION WAS TAKEN BEFORE ME STENOGRAPHICALLY AND AFTERWARDS TRANSCRIBED UNDER MY DIRECTION; THAT THE FOREGOING IS A FULL, TRUE, AND CORRECT TRANSCRIPT OF THE SAID DEPOSITION SO GIVEN; THAT THERE WAS NO REQUEST THAT THE WITNESS READ AND SIGN THE TRANSCRIPT; THAT THE APPEARANCES WERE AS STATED IN THE CAPTION.

I FURTHER CERTIFY THAT I AM NEITHER OF COUNSEL
NOR OF KIN TO ANY OF THE PARTIES TO THIS ACTION, AND
AM IN NO WAY INTERESTED IN THE OUTCOME OF SAID
ACTION.

WITNESS MY SIGNATURE THIS 18TH DAY OF DECEMBER,
2009. MY COMMISSION EXPIRES NOVEMBER 10, 2013.

NOTARY PUBLIC
STATE AT LARGE, KENTUCKY